

REMARKS

In an Office Action dated March 31, 2009 ("Office Action"), the Examiner objected to the claims due to minor informalities; rejected claims 1, 2, and 11 under 35 U.S.C. §102(a) as being anticipated by U.S. Patent Publication No. 2004/0189968 to Terasawa ("*Terasawa*"); rejected claims 3-9 under 35 U.S.C. §103(a) as being unpatentable over *Terasawa*; and rejected claim 10 under 35 U.S.C. §103(a) as being unpatentable over *Terasawa* in view of U.S. Patent No. 5815310 to Williamson ("*Williamson*").

By this Amendment, Applicant amends claims 1 and 10. These amendments add no new matter and are fully supported by the specification. Applicant respectfully traverses the aforementioned rejections and requests reconsideration based on the following remarks. In addition, Applicant does not necessarily agree with or acquiesce in the Examiner's characterization of the claims or the cited references, even if those characterizations are not addressed herein.

Objection to the Claims

The Examiner objected to the claims because of alleged informalities in claim 1. Herein, Applicant has amended claim 1 in an attempt to address the Examiner's concerns. Accordingly, Applicant respectfully requests that the Examiner withdraw the objection to the claims.

Claim Rejections Under 35 U.S.C. §102

Applicant respectfully requests reconsideration of the rejection of claims 1, 2, and 11 under 35 U.S.C. §102(a) as being anticipated by *Terasawa* for at least the reason that *Terasawa* is not prior art.

The instant application is a 35 U.S.C. §371 U.S. national stage application derived from PCT application PCT/JP04/19097, which properly claims priority to Japanese Patent Application No. 2003-426617 ("the '617 Japanese application"), filed with the Japanese Patent Office on December 24, 2003. Herewith, Applicant submits a certified English translation of the '617 Japanese application. In view of this submission, Applicant respectfully submits that the claim

of priority to the '617 Japanese application in the instant application is perfected. Applicant therefore submits that the instant application is entitled to a priority date of December 24, 2003.

The earliest effective filing date of *Terasawa* is December 24, 2003. As discussed above, however, the instant application is entitled to a priority date of December 24, 2003. Applicant submits that because the earliest effective filing date of *Terasawa* does not precede the priority date of December 24, 2003, of the instant application, *Terasawa* cannot be considered a prior art reference under any section of 35 U.S.C. §102. Accordingly, Applicant respectfully submits that the Examiner's rejections of claims 1, 2, and 11 under 35 U.S.C. §102(a) as being anticipated by *Terasawa* are improper. Applicant therefore requests that the Examiner withdraw the rejections of claims 1, 2, and 11 under 35 U.S.C. §102(a).

Claim Rejections Under 35 U.S.C. §103

Applicant respectfully traverses the rejections of claims 3-10 under 35 U.S.C. §103 because a *prima facie* case of obviousness has not been established with respect to these claims.

Claims 3-9

Claims 3-9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Terasawa*. Applicant respectfully submits that the Examiner has made an improper rejection of claims 3-9 under 35 U.S.C. §103(a) because *Terasawa* is not prior art. According to the M.P.E.P. "[a] 35 U.S.C. §103 rejection is based on 35 U.S.C. §102(a), §102(b), §102(e), etc. depending on the type of prior art reference used and its publication or issue date." M.P.E.P. §2141.01. In other words, a reference must first be prior art under one of the sections of 35 U.S.C. §102 in order to be used as a prior art reference under 35 U.S.C. §103.

As discussed above with respect to the Examiner's rejections under 35 U.S.C. §102, *Terasawa* does not qualify as prior art under any section of 35 U.S.C. §102. Therefore, the Examiner has improperly rejected claims 3-9 under 35 U.S.C. §103. Accordingly, Applicant

respectfully requests that the Examiner withdraw the rejections of claims 3-9 under 35 U.S.C. §103(a).

Claim 10

Claim 10 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Terasawa* in view of *Williamson*. As discussed above with respect to the Examiner's rejections under 35 U.S.C. §102, *Terasawa* is not prior art. Therefore, the Examiner has improperly rejected claim 10. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of claim 10 under 35 U.S.C. §103(a).

Conclusions

In view of the foregoing remarks, Applicant submits that the pending claims are neither anticipated nor rendered obvious in view of the references cited against this application. Applicant therefore requests the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 30, 2009

By: /David W. Hill/
David W. Hill
Reg. No. 28,220
202.408.4000